

**RCW 74.46.660 Conditions of participation.** In order to participate in the nursing facility medicaid payment system established by this chapter, the person or legal entity responsible for operation of a facility shall:

- (1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;
- (2) Hold the appropriate current license;
- (3) Hold current Title XIX certification;
- (4) Hold a current contract to provide services under this chapter;
- (5) Comply with all provisions of the contract and all applicable regulations, including but not limited to the provisions of this chapter; and
- (6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds. [1998 c 322 § 37; 1992 c 215 § 1; 1991 sp.s. c 8 § 13; 1980 c 177 § 66.]

**NOTES:**

**Effective date--1991 sp.s. c 8:** See note following RCW 18.51.050.

**RCW 74.46.680 Change of ownership. (Effective until October 1, 1998.)** (1) On the effective date of a change of ownership the department's contract with the old owner shall be terminated. The old owner shall give the department sixty days' written notice of such termination. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of termination.

(2) If the new owner desires to participate in the cost-related reimbursement system, it shall meet the conditions specified in RCW 74.46.660 and shall submit a projected budget in accordance with RCW 74.46.670 no later than sixty days before the date of the change of ownership. The facility contract with the new owner shall be effective as of the date of the change of ownership. [1985 c 361 § 2; 1980 c 177 § 68.]

**NOTES:**

**Savings--1985 c 361:** See note following RCW 74.46.020.

**RCW 74.46.680 Change of ownership--Assignment of department's contract. (Effective October 1, 1998.)** (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless: (a) The new owner does not desire to participate in medicaid as a nursing facility provider; (b) the department elects not to continue the contract with the new owner for good cause; or (c) the new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions specified in RCW 74.46.660. The facility contract with the new owner shall be effective as of the date of the change of ownership. [1998 c 322 § 38; 1985 c 361 § 2; 1980 c 177 § 68.]

NOTES:

**Effective date--1998 c 322 §§ 38 and 39:** "Sections 38 and 39 of this act take effect October 1, 1998." [1998 c 322 § 59.]

**Savings--1985 c 361:** See note following RCW 74.46.020.

**RCW 74.46.690 Termination of contract--Settlement. (Effective until October 1, 1998.)** (1) When a facility contract is terminated for any reason, the old contractor shall submit final reports as required by RCW 74.46.040.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) The old contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all other debts from any source, whether or not the overpayments are the subject of good faith dispute. Security shall consist of:

- (a) Withheld payments due the contractor; or
  - (b) A surety bond issued by a bonding company acceptable to the department; or
  - (c) An assignment of funds to the department; or
  - (d) Collateral acceptable to the department; or
  - (e) A purchaser's assumption of liability for the prior contractor's overpayment;
  - (f) A promissory note secured by a deed of trust; or
  - (g) Any combination of (a), (b), (c), (d), (e), or (f) of this subsection.
- (4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to determined or estimated overpayments, whether or not the subject of good faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term, as determined by the department, sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: PROVIDED, That the bond or assignment shall initially be for a term of at least five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment and debt liability as determined by the department;

(d) Provide that the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor from settlement or from any other source of debt to the department, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund and debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor, but not including completion of any judicial review available to and commenced by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after all overpayments, erroneous payments, and debts determined in connection with final settlement, or otherwise, including accumulated interest owed the department, have been paid by the contractor.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to terminate its medicaid contracts, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by preliminary settlement, final settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department. This subsection shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995. [1995 1st sp.s. c 18 § 113; 1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

#### NOTES:

**Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Savings--1985 c 361:** See note following RCW 74.46.020.

#### **RCW 74.46.690 Change of ownership--Final reports--Settlement. (Effective October 1, 1998.)**

(1) When there is a change of ownership for any reason, final reports shall be submitted as required by RCW 74.46.040.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information

available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports filed after December 31, 1997, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

(a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;

(b) An assignment of funds to the department;

(c) The new contractor's assumption of liability for the prior contractor's debt or potential debt; ~~or~~

(d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;

(e) A promissory note secured by a deed of trust; or

(f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

(a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and

(b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with the requirements of RCW 74.46.040, which shall be examined by the department in accordance with the requirements of RCW 74.46.100.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department. [1998 c 322 § 39; 1995 1st sp.s. c 18 § 113; 1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

**NOTES:**

**Effective date--1998 c 322 §§ 38 and 39:** See note following RCW 74.46.680.

**Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Savings--1985 c 361:** See note following RCW 74.46.020.

**PART H  
PATIENT TRUST FUNDS**

**RCW 74.46.700 Resident personal funds--Records--Rules.** Each nursing home shall establish and maintain, as a service to the resident, a bookkeeping system incorporated into the business records for all resident moneys entrusted to the contractor and received by the facility for the resident.

The department shall adopt rules to ensure that resident personal funds handled by the facility are maintained by each nursing home in a manner that is, at a minimum, consistent with federal requirements. [1991 sp.s. c 8 § 19; 1980 c 177 § 70.]

**NOTES:**

**Effective date--1991 sp.s. c 8:** See note following RCW 18.51.050.

**RCW 74.46.711 Resident personal funds--Conveyance upon death of resident.** Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 69.]

**NOTES:**

**Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**PART I  
MISCELLANEOUS**

TN # 98-11 Effective Date October 1, 1998 Approval Date September 3, 1999  
Supersedes TN # N/A

**RCW 74.46.770 Contractor appeals--Challenges of laws, rules, or contract provisions--Challenge based on federal law.** (1) If a contractor wishes to contest the way in which a rule relating to the medicaid payment system was applied to the contractor by the department, it shall pursue any appeals or exception procedure that the department may establish in rule authorized by RCW 74.46.780.

(2) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, any appeals or exception procedure that the department may establish in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. [1998 c 322 § 40; 1995 1st sp.s. c 18 § 114; 1983 1st ex.s. c 67 § 39; 1980 c 177 § 77.]

**NOTES:**

**Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**RCW 74.46.780 Appeals or exception procedure.** The department shall establish in rule, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing care providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate. [1998 c 322 § 41; 1995 1st sp.s. c 18 § 115; 1989 c 175 § 159; 1983 1st ex.s. c 67 § 40; 1980 c 177 § 78.]

**NOTES:**

**Conflict with federal requirements--Severability--Effective date--1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective date--1989 c 175:** See note following RCW 34.05.010.

**RCW 74.46.790 Denial, suspension, or revocation of license or provisional license--Penalties.** The department is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(1) Failed or refused to comply with the requirements of this chapter or the rules and regulations established hereunder; or

(2) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or

(3) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home; or

(4) Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter; or

(5) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or the rules and regulations promulgated hereunder. [1980 c 177 § 79.]

TN # 98-11 Effective Date October 1, 1998 Approval Date September 3, 1999  
Supersedes TN # N/A

**RCW 74.46.800 Rule-making authority.** (1) The department shall have authority to adopt, amend, and rescind such administrative rules and definitions as it deems necessary to carry out the policies and purposes of this chapter and to resolve issues and develop procedures that it deems necessary to implement, update, and improve the case mix elements of the nursing facility medicaid payment system.

(2) Nothing in this chapter shall be construed to require the department to adopt or employ any calculations, steps, tests, methodologies, alternate methodologies, indexes, formulas, mathematical or statistical models, concepts, or procedures for medicaid rate setting or payment that are not expressly called for in this chapter. [1998 c 322 § 42; 1980 c 177 § 80.]

**RCW 74.46.820 Public disclosure.** (1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter 42.17 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof. [1998 c 322 § 43; 1985 c 361 § 14; 1983 1st ex.s. c 67 § 41; 1980 c 177 § 82.]

**NOTES:**

**Savings--1985 c 361:** See note following RCW 74.46.020.

**RCW 74.46.835 AIDS pilot nursing facility--Payment for direct care.** (1) Payment for direct care at the pilot nursing facility in King county designed to meet the service needs of residents living with AIDS, as defined in RCW 70.24.017, and as specifically authorized for this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be exempt from case mix methods of rate determination set forth in this chapter and shall be exempt from the direct care metropolitan statistical area peer group cost limitation set forth in this chapter.

(2) Direct care component rates at the AIDS pilot facility shall be based on direct care reported costs at the pilot facility, utilizing the same three-year, rate-setting cycle prescribed for other nursing facilities, and as supported by a staffing benchmark based upon a department-approved acuity measurement system.

(3) The provisions of RCW 74.46.421 and all other rate-setting principles, cost lids, and limits, including settlement as provided in RCW 74.46.165 shall apply to the AIDS pilot facility.

(4) This section applies only to the AIDS pilot nursing facility. [1998 c 322 § 46.]

**RCW 74.46.840 Conflict with federal requirements.** If any part of this chapter or RCW 18.51.145 or 74.09.120 is found by an agency of the federal government to be in conflict with federal requirements that are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter or RCW 18.51.145 or 74.09.120 is declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter or RCW 18.51.145 or 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter or RCW 18.51.145 or 74.09.120 is found to be in

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Supersedes TN # N/A